

# Review of Constitution – Explanatory Document

## 1. Introduction

The detail provided below, as requested by members, is a restatement of the information provided at Management Committee Meetings, General Meetings and reiterated at the Extra-ordinary meeting held on Saturday 17<sup>th</sup> May regarding why the opinion was formed to recommend the Constitution be amended.

The detail is separated into two parts that is [1] name change and [2] clauses.

The suggested amendments were proposed after careful consideration reflecting on the past history of the Association including its initial purpose and reasons for existence. It also included examining the environment, current and proposed legislative [State and Federal] requirements, strategic direction, outcomes and policies adopted by the Disability Services Commission and other key service providers.

In addition, but of the greatest importance was and is the people who the Association does and does not assist, those that will be affected by the DSC Areas restructure, accommodation rationalisation, Fairholme redevelopment [up to 10 plus may not have coverage]. This is further exacerbated for those who do not have any representation eg Bennett Brook, shortly Milford as well as those who are residing in DSC and/or other accommodation.

This necessitated consultation, as required under the Constitution, with all of the major stakeholders, which has included the Association's membership at various meetings and DSC's Accommodation and Area Managers, as well as staff and Groups not currently represented.

## 2. Name Change

The considered need for amendment is detailed below:

Clause 1[b] of the Constitution states in part that the name may be changed in the event of a change of the major activity of the Association.

It was concluded that major activity change has occurred by virtue of the fact that the initial Constitution [26<sup>th</sup> August 1989] only had four Objects. Three additional clauses were added to the 17<sup>th</sup> July 2000 amendments and the current suggested amendments include a further five new clauses and as well as three of the existing ones amended to increase their scope.

As can be seen that the proposed scope of the Association's Objects have substantially changed with emphasis on supporting people with a disability in various ways. This approach [provision of greater support] was the basis of the Association's strong representation in its submission on the review of the Act as well as the deputation to the Attorney General with respect to proposed changes to the Guardianship and Administration legislative functions. Both proposals received unanimous formal endorsement by members.

The recently proposed changes to the Disability Services Act including Schedules 1 and 2, which the Association advocated so strongly to have amended, principally focussed on the need for greater support in the area of Alternatives to Employment. It appears all will be accepted as advised by circulated documents.

Currently Clause 8 [c] of the Associations Incorporation Act requires that the name of an incorporated body, eg an Association, does not mislead the public as to its Object or Purpose. Verbal legal advice has confirmed that given the past and proposed changes to the Objects, in particular, the current name *Parents and Friends of Fairholme Association Inc* would not satisfy the above noted requirement.

This advice was further supported by the fact that when seeking detail relating to a possible application to become a Registered Charitable Organisation under the Act. After providing detail of the Association's current name and the proposed Constitutional changes to its Objects the DOCEP officer advised that the current name did not adequately reflect the Association's primary purpose, which was concluded to be one of support to people with a disability.

In the circumstances the Association's application could be refused under the powers provided in clause 11 of the Charitable Collections Act.

In addition, due regard was paid to the resolutions [given mandates] made by members of the Association over a number of years to provide support to those people with a disability who did not have adequate representation to achieve satisfactory outcome/s for themselves.

Some Association members, as individuals have provided this support, because there was no Constitutional support. The continuation of this support is considered to be unacceptable because of possible legal exposure and the question of privacy. Due to the substantial changes, in particular, the changes in accommodation arrangements, individual and group capacity, aging and/or the passing of parents the need for change was seen to be paramount. This was agreed to be significant if a high quality of life was to be maintained and further enhanced in areas of unmet need, in particular, for those who could not represent their loved ones and/or themselves.

It was for these compelling reasons, in particular the legislative requirements and equally the priority need to support those who did not have and/or will not have adequate support that the proposed change has been brought to the attention of members.

### **3. Clause Amendments**

The following essential principles were adopted in considering the suggested amendments apart from those stated in the Introduction to ensure that people with a disability, their parents, families, carers' etc:

- Have a stronger collective voice within the community.
- Have a least restrictive living arrangement [eg Fairholme redevelopment] and inclusion into the community.
- Can be represented at all levels by persons who have the necessary skills, knowledge and competencies with respect to all aspects of their needs. This also applies when parents etc are not in a position, for whatever reason, at the time to adequately represent their son and/or daughter etc.

It should be noted that more and more people with a disability who cannot advocate for themselves are losing representation which must be stopped in particular in the areas of advocacy and legal representation and/or guardian/administration.

- There is strength by having unity and focus on achieving greater and more positive outcomes.

In addition, Governments as well as other Agencies have provided more and more support in various forms to enable people with a disability to participate, as well as having choices which was not possible to the same extent as now. In addition before and since its inception this Association has sought to form partnerships which resulted in beneficial support from external people, community groups and clubs. These include but not limited to Disability Services Commission, Rotary, Lions, CWA, WorkPower, City and Town Councils, Salvation Army, other Church Groups, holiday and activity providers' etc to name just a few. Through their generous support people with a disability quality of life has been substantially enhanced, which would not have been possible to the same collective extent if undertaken by individuals.

These changes have been reflected in the suggested amendments to the Objects.

The remainder of the changes has been made to meet legislative requirements or alternatively they are procedural.

### **4. Conclusion**

It is considered that the suggested changes truly reflects the future direction the Association should pursue with vigour and will assist in securing the most desirable outcomes for our loved ones both in the short and long term which includes when we do not have the capacity to contribute anymore.

The suggested amendments, in particular the name change, are considered not to diminish and/or detract from the recognition, support etc provided by and/or to parents. To the contrary the suggested amendments have been included to ensure that when for example parents are not available to support their loved ones that other dedicated and special people will step up and assume the role in the same devoted and caring way.

# **CONSTITUTION OF FAIRHOLME DISABILITY SUPPORT GROUP INC**

## **1. NAME**

- (a) The name of the Association shall be Fairholme Disability Support Group Inc [the Group]”.
- (b) The name of the Group may be changed as decided at a General Meeting or Annual General Meeting in the event of a change of the major activity of the Association.
- (c) Accommodation as referred below shall mean Hostels, any other accommodation facilities and/or residences, which the Disability Services Commission, Area Managers have responsibility. For example but not limited to other residences such as group homes and rental properties.

## **2. DEFINITIONS**

In this Constitution and Rules, unless the contrary intention appears –

“**Affiliate Member**” means any person defined by section 4 of this Constitution. The rights of any affiliate member shall not be transferable.

“**Disability**” means a condition, which is attributable to an intellectual, cognitive, neurological, sensory, or physical impairment or a combination of those impairments and which results in a need for continuing support services.

“**Financial Year**” means the period commencing on the 1<sup>st</sup> July in each year and ending on the 30<sup>th</sup> June in the following year.

“**General Meeting**” means any meeting other than the Annual General Meeting and/or Management Committee Meeting;

“**Group**” means Fairholme Disability Support Group Inc

“**Law**” means the Associations Incorporations Act 1987 or any other legislative requirements of the Commonwealth of Australia or the State of Western Australia pertaining to the operations of the Group.

“**Management Committee**” means the elected persons pursuant to section 12 of this Constitution.

“**Ordinary Member**” means any person defined by section 4 of this Constitution. The rights of any ordinary member shall not be transferable.

“**Representative/s**” means only the Management Committee of the Group

“**Special Meeting**” means any meeting convened on the requisition of the ordinary members as provided by the Constitution.

“**Support**” means provide for, strengthen, encourage, give help and/or approval and speak in favour of.

“**Voluntary Code of Practice for Public Fundraising**” means the Code as defined under the Charitable Collections Act 1946.

“**Vote**” means personal vote for each financial ordinary member who is in attendance at any constituted meeting. An affiliate member shall not be entitled to a vote.

“**Words**” importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and vice versa unless contrary as to the gender or the number is expressly provided.

## **3. OBJECTS**

- (a) To enhance people with a disability quality of life through mutual understanding, assistance, comfort and provision of all practicable services by providing support, assistance and encouragement to parents, families, guardians, carers, service providers, Disability Service Commission, staff, other interested persons and groups.

- (b) Seek to safe-guard the right of people with a disability to economic security and to a normal quality of living; and to further safeguard their right to be employed on productive work or to be occupied by other meaningful activities such as but not limited to recreational and/or leisure.
- (c) To seek to safeguard the right of people with a disability to the least restrictive living arrangement and to safeguard their rights to surroundings and circumstances as close to possible to normal living conditions.
- (d) To seek to ensure that people with a disability have legal representation and/or a guardian/administration when this is required and legally possible to protect their wellbeing and interest.
- (e) To encourage and foster provision of advocacy services for people with a disability, their families, carers and service providers.
- (f) To promote inclusion of people with a disability into general community services compatible with individual needs.
- (g) To advance knowledge, inform and educate the local community in the objects and purposes of the Group
- (h) To advance knowledge, inform and educate the local community in matters relating to people with disabilities and to promote their acceptance by the general public.
- (i) To consult, cooperate and act jointly with people or bodies including the Disability Services Commission so far, as is necessary to enhance the provision of services to meet the needs of people with disabilities.
- (j) To raise funds to provide amenities, services including recreational and leisure and any other agreed requirements for the purposes of supporting people with disabilities including but not limited to residents of Hostels and other residences.
- (k) The property and income of the Group shall be applied solely towards the promotion of the objects set forth herein or the purposes of the Group and no part of that property or income shall be paid or otherwise distributed directly or indirectly to members of the Group except in good faith and in the promotion of these objects or purposes.
- (l) Insofar as is practicable the Group's members when motioning action at any meeting shall pay due regard to Schedules 1 and 2 of the Disability Services Act 1993, these being:

Principles Applicable to People With Disabilities; and

Objectives for Services and Programs Relating to People with Disabilities. (See attachments 1 & 2).

#### **4. MEMBERSHIP**

Any person interested in the advancement or maintenance of people with disabilities shall be eligible for membership of the Group.

The membership shall be in two categories, that is:

Ordinary Member means any person who is eligible to vote in accordance with State and Commonwealth Electoral law; and

Affiliate Member means any person who pays the Affiliate Member's subscription, which shall be 50% of an Ordinary Member. An Affiliate Member shall not be eligible to vote in accordance with the Constitution.

The Secretary of the Group shall cause to be kept a current register of both categories of members [ordinary and affiliate] of the Group. The rights of any member shall not be transferable.

The Group's ordinary member membership at a general or annual general meeting may cause Honorary Life Membership to be bestowed upon any member or any other person in acknowledgment of their outstanding contribution in progressing the Objects of the Group

#### **5. CODE OF CONDUCT**

The Group shall adopt a Code of Conduct to promote good practices, which all members shall observe and comply with to the extent that it obliges compliance.

No member shall represent the Group unless they have been duly authorised.

#### **6. CONFIDENTIALITY**

All members have a duty of good faith to the Group and shall abide by its agreed Confidentiality Guidelines as approved. Unauthorised disclosure is a breach of this duty.

#### **7. DISCIPLINE OF MEMBERS**

The Management Committee may by seventy five percentage majority vote expel or by a majority vote, suspend or otherwise discipline any member of the Group for conduct inconsistent with this constitution or which in the opinion of the Management Committee is unbecoming of a member or prejudicial to the interests of the Group provided that the member receives fourteen days notice of any proposal to discipline and reasonable opportunity is given for the member to be heard in relation to the proposal for discipline.

Any member from the Group may at any time apply to the Management Committee to be readmitted as a member.

#### **8. CESSATION OF MEMBERSHIP**

Membership of the Group will terminate upon:

- (a) The Secretary receiving from a member a letter of resignation;
- (b) A member being expelled or suspended in accordance with section 7:
- (c) Death or insolvency of a member;
- (d) A member not renewing their membership;
- (e) A member whose membership of the Group is terminated will be liable for all monies due by that member;
- (f) A member whose membership of the Group is terminated will not make any claim' monetary or otherwise, its funds or property except as a creditor thereof; and
- (g) Any person who for any reason ceases to be a member shall no longer represent himself or herself in any manner as being a member.

#### **9. SUBSCRIPTIONS**

The annual subscriptions shall be determined at the annual general meeting in each year, and shall fall due on 1<sup>st</sup> July and shall be paid no later than the 1<sup>st</sup> September unless otherwise resolved.

The annual subscription for affiliate members shall be 50% of the annual subscription determined for ordinary members.

Only ordinary members who have paid their annual subscriptions shall be eligible to vote.

#### **10. ANNUAL GENERAL MEETING**

The Annual General Meeting of the Group shall be held in the month of August in each year, upon a date and a time to be fixed by a general meeting, for the following purposes:

- (a) To receive from the Chair a detailed written report of the overall affairs of the Group since the preceding annual general meeting.
- (b) To receive from the Treasurer an audited statement of receipts and expenditure for the preceding financial year.
- (c) The election of office bearers for the ensuing year.
  - Chair
  - Deputy Chair
  - Secretary
  - Treasurer
  - Resident's Advocate
  - Management Committee Members (3)
- (c) The election of Patron/s and Vice Patron/s for the ensuing year.

(e) The election of Auditor for the ensuing year.

(f) To consider any other business, notice of which has been given not less than fourteen days before the meeting.

(g) To determine the annual subscriptions.

All positions shall become vacant at each annual general meeting. The candidate who receives the most votes shall be declared elected, and in the case of two or more candidates receiving an equal number of votes, the independent Chair of the election shall have a casting vote.

## **11. GENERAL MEETINGS**

General meetings shall be held at least every three months to arrange the affairs of the Group on dates agreed at the Annual General Meeting. Ten members shall form a quorum. Minutes shall be taken of all resolutions and proceedings of the general meeting and shall be open to inspection at any reasonable time by any member of the Group and at no cost.

Voting at General Meetings shall be on an equal basis with the Chair participating only if a casting vote is required.

## **12. MANAGEMENT COMMITTEE**

The management of the Group shall be deputed to the Management Committee of not more than eight (8) ordinary members including a Chair, Deputy Chair; Honorary Secretary, Honorary Treasurer, Resident's Advocate and three (3) committee members having been elected at the Annual General Meeting.

The Management Committee may co-opt from time to time such ordinary members of the Group or any other person including an affiliate member to assist the committee as may be deemed necessary.

The Management Committee shall have the power to appoint an ordinary member to fill any casual vacancy of the Management Committee until the next General Meeting. Any ordinary members so appointed shall retire at the next annual general meeting but shall be eligible for election as a member of the Management Committee at such meeting.

In addition the Management Committee shall where considered appropriate consult as widely as is practicable including but not limited to the Disability Services Commission such as Directors and Managers, to ensure that the Management Committee is fully informed about any issue before forming a final opinion.

Any ordinary member of the Management Committee who is absent for three (3) consecutive meetings (general and/or management) without leave of absence shall, unless otherwise decided at a general meeting, be deemed to have resigned and a vacancy shall thereupon exist on the Management Committee.

The Management Committee shall meet as a minimum once between every General Meeting and as and when required to deal with general delegated and/or any resolved matter specified at any general, extraordinary or annual meeting or any matter of urgency and/or special nature prior to the next general meeting. General delegated matters shall include:

- Correspondence including the dissemination of information;
- Authorise expenditure not exceeding \$5,000 for each invoice;
- Ensure that assets and income are applied solely for the furtherance of the Objects;
- Interpretation of the Constitution; and
- Researching, advising and/or making recommendation on any matter requiring decision at any general, extraordinary or annual meeting.

Members where practicable shall be given seven (7) days notice prior to a Management Committee meeting being called.

The Management Committee shall report to members at each General Meeting on items it has dealt with.

Four (4) ordinary members of the Management Committee shall form a quorum.

Voting shall be on an equal basis with the Chair participating only if a casting vote is required.

## **13. EXTRAORDINARY GENERAL MEETING**

An Extraordinary General Meeting may be called by the Chair or upon the request in writing by at least three (3) members of the Group stating the purpose of which the meeting is required.

#### **14. CONVENED GENERAL MEETING**

Seven (7) days before any general meeting, and twenty-one (21) days before any Annual or Extra Ordinary General Meeting a notice of such meeting shall be sent to every member, listing the business to be transacted.

#### **15. PROCEEDINGS AT GENERAL AND MANAGEMENT COMMITTEE MEETINGS**

At all General and Management Committee meetings of the Group the Chairperson, or Vice Chairperson or in their absence an ordinary member elected by those in attendance shall take the chair.

Every ordinary member present shall be entitled to one vote upon every motion and should there be an equal number of votes the Chairperson shall have a casting vote. Those attending the General Meeting shall be empowered to make regulations for enabling ordinary members not present to vote by proxy or in writing.

Minutes shall be taken of all proceedings and resolutions.

#### **16. FUNDS**

The Honorary Treasurer of the Group shall cause to be kept true and proper accounts of all receipts and expenditure in accordance with Australian Accounting Standards. The financial year of the Group shall end on the 30<sup>th</sup> June and subscriptions shall fall due before 1<sup>st</sup> July and be paid no later than 1<sup>st</sup> September. A copy of the accounts of the Group made up to 30<sup>th</sup> June shall be submitted to an auditor appointed by the Group. The auditor may at any time call for and inspect the accounts.

Funds raised shall be the property of the Group and the surplus in hand at the end of each financial year to be administered by the Management Committee.

The Treasurer shall present to the members at each General Meeting the original of each Bank Statement for all of the Group's accounts. The Bank Statement(s) will be the month to which the accounts tabled at the meeting refer, and will show the balance(s) as at the previous meeting. Each statement shall be reconciled and provided in written form, which shall include as a minimum a balance sheet and an income and expenditure statement.

The signature of the Chair and Treasurer, together with the General Meeting date shall be on the last page of each bank statement presented. If the Treasurer is unable to attend the General Meeting then the original bank statement/s shall be given to the Chairperson prior to the meeting, duly reconciled, signed and dated by the Treasurer.

If this is not practicable the Chair and Treasurer shall make other suitable arrangements. Also, if no meeting is held due to a predetermined cancellation, lack of a quorum or any other reason, the Treasurer shall still reconcile the accounts and present to the Chair, signed and dated.

The Group shall adopt the Voluntary Code of Practice for Public Fundraising and apply all of its principles.

#### **17. INTERPRETATION OF RULES**

The Management Committee has the power to interpret the rules subject however to any other interpretation of such rules being made by members at a General Meeting.

#### **18. BY LAWS**

The Management Committee has the powers to create and recommend By Laws to a general meeting but shall not be effective until the minutes of the general meeting where they were established have been confirmed at the next general meeting.

#### **19. AMENDMENT OF RULES**

These rules may only be added to repealed or amended by resolution at an Annual General Meeting or extraordinary general meeting provided that the notice to amend the rules is included in the notice of the meeting, and no such resolution shall be deemed to have been passed unless it is carried by a majority of not less than 75% of the members voting thereon. Within one month of the passing of a special resolution to amend its rules the Group shall lodge with the Department of Consumer and Employment Protection notice of the special resolution setting out particulars of the alterations together with a certificate that the resolution was duly passed as a special resolution and that the rules of the Group as so altered conform to the requirements of the Act.

## **20. DISSOLUTION OF THE GROUP**

A resolution for the dissolution of the Group shall only be proposed after due notice of an appropriate motion being given for an Annual General Meeting or an Extraordinary General Meeting the Group. In the event of the resolution no such resolution shall be deemed to have been passed unless it is carried by a majority of not less than 75% of the members voting thereon, the following shall apply.

If upon the winding up of or dissolution of the Group there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members but shall be given or transferred-

- (a) to another Association incorporated under the Act; or
- (b) for charitable purposes;

which incorporated or purposes, as the case requires be determined by the resolution of the members when authorising and directing the Committee under section 33(3) of the Act to prepare a distribution plan of the surplus property of the Group.

In the event of the winding up or dissolution of the Group, the Commissioner of Taxation shall be advised of the date of dissolution within thirty days of dissolution.

## **21. COMMON SEAL**

The Common Seal of the Group engraved with the name of the Group shall be kept in the care of the Secretary. The seal shall not be used or affixed to any deed or other document except pursuant to a resolution of the Management Committee and in the presence of the Chair and one ordinary member of the Management Committee who shall subscribe his/her name as a witness.

## **22. POWERS**

In addition to and without prejudice to the generality of the powers conferred on it by section 13 of the Act.

The Group shall have power to do all things that are necessary, incidental or conducive to the attainment of the objects of the Group.

## **23. OTHER**

As the purposes of the Group shall be for public benevolence and non-profit making the Deputy Commissioner of Taxation for Western Australia shall be advised of any amendments or date of dissolution of this constitution.

I hereby certify that the foregoing to be a true and correct copy of the rules of the Group having application from 22<sup>nd</sup> September 2003 – Document No. 100076023; Registration No. A0824273H.

Bevan Dellar  
Bevan Dellar  
Secretary  
24<sup>th</sup> September 2003